

## Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-05 H-01

INR-10 L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15

USIA-06 AID-05 EB-08 OMB-01 TRSE-00 /085 W

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FM AMEMBASSY COLOMBO

TO SECSTATE WASHDC 9673

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AMEMBASSY LONDON

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E.O. 11652: N/A

TAGS: PGOV, CE

SUBJ: SRI LANKA'S EVOLVING GOVERNMENTAL STRUCTURE

1. SUMMARY: SRI LANKA'S CONSTITUTION IS STILL BEING EVOLVED. A SECOND AMENDMENT TO THE CONSTITUTION WAS PASSED IN OCTOBER 1977 CHANGING THE PRESIDENCY FROM A FIGURE HEAD, CEREMONIAL POSITION TO A STRONG EXECUTIVE SIMILAR TO THE FRENCH MODEL. ON FEBRUARY 4, 1978, J.R. JAYEWARDENE, UNTIL THEN PRIME MINISTER, AUTOMATICALLY BECAME PRESIDENT. THE SECOND AMANDMENT GIVES HIM STRON GEXECUTIVE POWERS, BUT THE MECHANISM HE WILL USE FOR IMPLEMENTING THOSE POWERS IS UNCLEAR. WHEN THE ALREADY DELAYED THIRD CONSTITUTIONAL AMENDMENT IS MADE PUBLIC, WE WILL HAVE A BETTER SENSE OF THE STRUCTURE AND POWER RELATIONSHIPS OF THE NEW JAYEWARDENE GOVERNMENT AND HOW IT WILL FUNCTION.

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2. JAYEWARDENE'S STATED AIM IN ADVOCATING THE EXECUTIVE PRESIDENCY WAS STABILITY OF THE COUNTRY'S EXECUTIVE FUNCTION. HE WANTED A STRONG EXECUTIVE IN POWER FOR A FIXED NUMBER OF YEARS AND NOT SUBJECT TO THE "WHIMS AND FANCIES OF AN ELECTED LEGISLATURE, NOT AFRAID TO TAKE CORRECT BUT UNPOPULAR DECISIONS BECAUSE OF CENSURE FROM ITS PARLIAMENTARY PARTY." THE AMENDED CONSTITUTION SEEKS TO ACCOMPLISH THAT AIM. HOWEVER, EXCEPT

FOR INSURING THE CONTINUANCE OF THE EXECUTIVE NO MATTER WHAT HAPPENS TO PARLIAMENT, IT IS DIFFICULT TO PINPOINT WHAT EXECUTIVE POWERS THE PRESIDENT NOW HAS THAT HE DID NOT ALREADY HAVE AS PM. THE NSA WILL CONTINUE TO LEGISLATE, BUT THE PRESIDENT HAS NO EXPLICIT VETO POWER. THE ONE TRUMP HE DOES HAVE IS THE THREAT TO DISSOLVE THE NSA WHILE REMAINING IN POWER HIMSELF. END SUMMARY.

### 3. CEREMONIAL PRESIDENCY

UNTIL THE FEBRUARY 4 INAUGURATION OF J.R. JAYEWARDENE AS PRESIDENT OF SRI LANKA, THE FUNCTION OF THE PRESIDENT AS HEAD OF STATE WAS LARGELY CEREMONIAL. HE WAS NOMINATED BY THE PRIME MINISTER FOR A FOUR YEAR TERM AND ALTHOUGH GIVEN SOME POWERS AND FUNCTIONS UNDER THE CONSTITUTION, HE WAS REQUIRED TO ACT ON THE ADVICE OF THE PRIME MINISTER (PM) OR SOME OTHER MINISTER GIVEN AUTHORITY BY THE PM TO ADVISE THE PRESIDENT ON MATTERS PARTICULAR TO HIS MINISTRY. THE PRESIDENT WAS THE CONSTITUTIONAL OR FORMAL HEAD OF THE EXECUTIVE, BUT UNDER SRI LANKA'S WESTMINISTER TYPE PARLIAMENTARY SYSTEM, EFFECTIVE EXECUTIVE POWER RESIDED WITH THE CABINET OF MINISTERS HEADED BY THE PRIME MINISTER. THE PRESIDENT'S CHIEF BUT LIMITED DISCRETIONARY POWERS WERE IN APPOINTING A PM WHEN A PARTY HAD NO RECOGNIZED LEADER OR WHEN NO PARTY COMMANDED AN ABSOLUTE MAJORITY IN THE NATIONAL STATE ASSEMBLY (NSA) AFTER A GENERAL ELECTION. HE ALSO HAD DISCRETIONARY POWER IN NOT HAVING TO ACCEPT THE REQUEST TO DISSOLVE THE NSA WHEN MADE BY THE PM. LIMITED OFFICIAL USE

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IN SUCH CASES, THE PM WOULD HAVE BEEN DEEMED TO HAVE RESIGNED. THE NSA WAS THE SUPREME INSTRUMENT OF STATE POWER AND WAS EXPLICITLY GRANTED EXECUTIVE POWERS TO BE EXERCISED THROUGH THE PRESIDENT AND THE CABINET OF MINISTERS, AS WELL AS LEGISLATIVE AND JUDICIAL POWERS THROUGH THE COURTS.

### 4. EXECUTIVE PRESIDENT

THE CONSTITUTION AS AMENDED MAKES THE PRESIDENT AND NSA DUAL SUPREME INSTRUMENTS OF STATE POWER, WITH THE PRESIDENT EXERCISING EXECUTIVE POWERS, INCLUDING NATIONAL DEFENCE, AND THE NSA RETAINING ITS LEGISLATIVE AND JUDICIAL FUNCTIONS. THE PRESIDENT CANNOT BE A MEMBER OF THE NSA BUT HAS THE RIGHT OF AUDIENCE AT ALL TIMES AND IS HEAD OF AND PRESIDES AT MEETINGS OF THE CABINET MINISTERS. ALTHOUGH JAYEWARDENE IN ACCORDANCE WITH THE SECOND AMENMENT AUTOMATICALLY BECAME PRESIDENT FOR A TERM OF SIX YEARS, SUBSEQUENT PRESIDENTS WILL BE ELECTED IN NATIONAL ELECTIONS.

### 5. EXERCISE OF EXECUTIVE POWERS

THE PRESIDENT APPOINTS THE PM AND MINISTERS FROM AMONG THE ELECTED MEMBERS OF THE ASSEMBLY. HE CAN DETERMINE THE NUMBER OF MINISTERS AND CAN ASSIGN TO THEM WHATEVER FUNCTIONS AND

SUBJECTS HE DEEMS NECESSARY, INCLUDING THOSE OF THE PM, AND HE CAN ALTER THESE AT WILL. THOSE PORTFOLIOS FOR WHICH HE DOES NOT APPOINT A MINISTER HE CAN KEEP TO HIMSELF.

6. THE CABINET

THE CABINET OF MINISTERS AND PARTICULARLY THE PM SUFFER NOT INCONSIDERABLE LOSSES OF POWER UNDER THE NEW SYSTEM. WHAT EXECUTIVE POWERS THEY DO EXERCISE WILL DEPEND ON HOW THE PRESIDENT USES HIS MINISTERS. AT THE MOMENT, THE PM IS SECOND IN THE HIERARCHY; WHEN THE PRESIDENT IS INCAPACITATED OR ABSENT FROM THE COUNTRY, THE PM SHALL ACT IN THE OFFICE OF PRESIDENT. THE REQUIREMENT THAT THE ACTING PRESIDENT TAKE THE OATH OF OFFICE HAS BEEN DROPPED. THE IMPLICATIONS OF THE CHANGES ARE THAT THE PM AUTOMATICALLY BECOMES PRESIDENT UNDER THE SPECIFIED LIMITED OFFICIAL USE

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CIRCUMSTANCES. THERE HAVE BEEN RECURRING RUMORS THAT SOME WITHIN THE UNP WOULD NOT WANT TO HAVE PREMADASA ACTING AS THE PRESIDENT. FOR A TIME THERE WERE REPORTS THAT CONSIDERATION WAS BEING GIVEN TO CREATING A VICE PRESIDENCY IN THE THIRD CONSTITUTIONAL AMENDMENT, BUT TALK OF THIS HAS DIED DOWN, INDICATING THAT THE IDEA MAY HAVE BEEN DROPPED.

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7. A PRESIDENTIAL STAFF

A SIGNIFICANT ADDITION TO THE CONSTITUTION IS THE PRESIDENTIAL POWER TO APPOINT OFFICERS AND ADVISERS TO ASSIST HIM IN EXERCISING HIS POWERS, FUNCTIONS, AND DUTIES. ONLY THE PRESIDENT CAN DISCIPLINE OR DISMISS SUCH OFFICERS AND ADVISERS. ANOTHER ADDITIONAL POWER ENABLES THE PRESIDENT TO APPOINT MEMBERS AS MINISTERS WHO ARE NOT MEMBERS OF THE CABINET. SUCH MINISTERS CAN BE ASSIGNED ANY FUNCTIONS AND SUBJECTS AND WOULD BE RESPONSIBLE AND ANSWERABLE TO THE PRESIDENT AND THE NSA. IT IS THE USE OF THESE TWO POWERS THAT WILL DETERMINE THE POWER STRUCTURE OF THE NEW GOVERNMENT. THE THIRD AMENDMENT IS EXPECTED TO DEFINE THE POWERS OF NON-CABINET MINISTERS. WE KNOW THAT DISTRICT MINISTERS ARE TO BE APPOINTED, BUT WE DO NOT KNOW WHAT THEIR POWERS WILL BE OR WHAT THE COMMAND RELATIONSHIPS WILL BE. WILL THEY BE RESPONSIBLE DIRECTLY TO THE PRESIDENT OR TO HIM THROUGH THE CABINET? HOW WILL THEY RELATE TO OFFICIALS IN THE DISTRICTS, SUCH AS GOVERNMENT AGENTS, DISTRICT REVENUE OFFICERS, ETC.? THERE HAS ALSO BEEN TALK OF

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REDUCING THE NUMBER OF CABINET PORTFOLIOS AND OF APPOINTING MINISTERS OF STATE. SPECULATION IS THAT THE HIERARCHICAL ORDER WOULD BE CABINET MINISTERS, MINISTERS OF STATE, AND DISTRICT MINISTERS. HOWEVER, FROM WHAT WE HAVE BEEN ABLE TO DETERMINE ABOUT THE PRESIDENT'S MODUS OPERANDI, HE SEEMS TO PREFER WORKING WITH A FEW CLOSE, TRUSTED ADVISERS. HE MAY THEREFORE DEVELOP A CLOSE-KNIT WORKING GROUP AROUND HIM PATTERNED SOMEWHAT ON THE WHITE HOUSE STAFF. THERE ARE SEVERAL HIGHLY COMPETENT AND TRUSTED MINISTERS IN THE CABINET AND THE PRESIDENT MAY CHOOSE TO WORK CLOSELY WITH THEM AS WELL.

8. CHECKS AND BALANCES

ONE OF JAYEWARDENE'S ARGUMENTS JUSTIFYING THE NEED OF AN EXECUTIVE PRESIDENT WAS TO GIVE STABILITY AND CONTINUITY TO THE EXECUTIVE FUNCTION. A NATIONALLY ELECTED PRESIDENT WOULD NOT HAVE TO DEPEND ON A PARLIAMENTARY MAJORITY FOR HIS EXISTENCE AND HE WOULD HAVE A FIXED TERM IN OFFICE. WITH THE PRESIDENT FUNCTIONING INDEPENDENTLY OF AND NOT RESPONSIBLE TO THE NSA, IT IS DIFFICULT TO PINPOINT WITH ANY PRECISION WHAT CHECKS AND BALANCES THERE ARE UNTIL THE CONSTITUTIONAL REVISIONS ARE COMPLETED AND WE HAVE SOME EXPERIENCE WITH THE NEW ARRANGEMENT IN PRACTICE.

9. THE NSA'S LEGISLATIVE POWER WILL BE THE PRINCIPAL CHECK

IT HAS ON THE PRESIDENT. THE PRESIDENT HAS NO VETO POWER AS SUCH AND WILL HAVE TO FUNCTION WITHIN THE LAWS PASSED BY PARLIAMENT. IN THEORY, THE NSA ALSO HAS THE POWER TO REMOVE THE

PRESIDENT BY A VOTE OF NO-CONFIDENCE INITIATED BY ONE HALF OF THE MEMBERS AND PASSED BY A TWO-THIRDS MAJORITY. ANOTHER NSA CHECK ON THE PRESIDENT IS THE PARLIAMENTARY SELECT COMMITTEE THATPASSES ON APPOINTMENTS OF NON-CAREER AMBASSADORS, HEADS OF PUBLIC CORPORATIONS, AND OTHER HIGH LEVEL APPOINTMENTS. THUS FAR, THIS COMMITTEE HAS BEEN MERELY A RUBBER LIMITED OFFICIAL USE

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STAMP OPERATION, THOUGH SRI LANKA'S AMBASSADOR TO THE UN B.J. FERNANDO, THE FIRST TO BE EXAMINED, WAS BEFORE THE COMMITTEE FOR TWO HOURS.

10. THE OVERRIDING CHECK, HOWEVER, APPEARS TO BE ON THE PRESIDENT'S SIDE. HE HAS THE POWER TO DISSOLVE THE NSA AND COULD DO SO BEFORE IT COULD VOTE ON A NO-CONFIDENCE MOTION OR PASS A LAW STRONGLY OPPOSED BY THE PRESIDENT. SOME LAWYERS CONTEND THAT IF THE NSA IS DISSOLVED, THE MP'S COULD TAKE THEIR CASE TO THE PEOPLE IN AN ELECTION. THAT IS OF COURSE CORRECT. NEVERTHELESS IN PRACTICAL TERMS THE PRESIDENT REMAINS IN POWER NO MATTER WHAT THE OUTCOME OF THE ELECTION AND CAN STILL BLOCK A NO-CONFIDENCE VOTE OR AN UNWANTED LAW BY THE NEW PARLIAMENT.

11. WITH THE HUGE MAJORITY THEPRESENT GOVERNING PARTY HAS IN THE NSA, UNLESS IT SUFFERS A FISSIPAROUS RUPTURE, THE SCENARIO OF THE PRESIDENT AND PARLIAMENT THWARTING ONE ANOTHER IS MOST UNLIKELY. IF, HOWEVER, SOME TIME IN THE FUTURE, THE PRESIDENT WERE FROM A PARTY DIFFERENT FROM THE MAJORITY PARTY IN THE NSA, THERE IS A POSSIBILITY FOR JUST THE CONFUSION AND INSTABILITY THAT JAYEWARDENE SEEKS TO AVOID WITH HIS NEW CONSTITUTION.  
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